

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed May 12, 2008. Claims 17, 19 and 36-49 were pending and rejected in view of cited art.<sup>1</sup> Claims 45, 46, and 47 are cancelled, claims 17 and 36 are amended, and new claims 50-59 are added. Claims 17, 19, 36-44, and 48-59 are now pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. CLAIM OBJECTIONS**

The Office Action objected to claims 45, 46, and 47. By this amendment the claims 45, 46, and 47 have been canceled. Accordingly, Applicant respectfully requests withdrawal of the objection.

### **C. PRIOR ART REJECTIONS**

#### **I. REJECTION UNDER 35 U.S.C. § 103**

The Office Action rejected claims 17-20, 36-41, 43-46 and 48 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,488,692 (*Spence*) in view of U.S. Patent No.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Support for the claim amendments and new claims can be found throughout the specification and drawings as originally filed.

6,599,303 (*Peterson*). Applicants traverse the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

*Spence* was cited as disclosing “a clip having a ring-shaped body (MR) defining a plane and disposed about a central access . . . the body (MR) is capable of being moved from a substantially planar configuration to a transverse configuration because it is malleable” (Office Action, page 3). It was further indicated in the Office Action that *Spence* “teaches spring elements (MD) that can be used to shape the clip” and that *Peterson* discloses “biased spring elements (18) between adjacent tines” (Office Action, page 3).

The “[r]ing MR [of *Spence*] is malleable and has little material memory which permits it to be deformed from the oval configuration shown in FIG. 7 . . . and to then retain that shape until-mechanically [sic] deformed again back toward the FIG. 7 configuration” (*Spence*, col. 8, lines 16-23). The “docking elements”, identified in the Office Action as the spring elements, are included in the malleable ring. Applicant respectfully submits that these “docking elements” are not “spring elements” or “biased spring element[s] resiliently allowing the tips of the tines to be moved away from one another” as claimed in independent claims 17, 36, and 50. It is not clear how the “docking elements” having any spring force associated with them because the material has “little material memory.”

Further, even if, *arguendo*, *Peterson* discloses “biased spring elements” there would be no reason to combine the teaching of “biased spring elements” with elements that are “malleable and [have] . . . little material memory.” These structures appear to teach away from each other; one structure having “little material memory . . . and . . . retain[ing] that [deformed] shape until mechanically deformed again” and the other structure being “biased” to return to a previous configuration. Combining the “biased spring element” of *Peterson* with the ring of *Spence* would appear to change the underlying operation of *Spence* which indicates that the ring has “little material memory” and “retains[s] that [deformed] shape until-mechanically deformed again.”

In addition to the above, independent claim 36 has been amended to recite, in part, “a biased spring element disposed between adjacent tines, the biased spring element resiliently allowing the tips of the tines to be moved away from one another and to be moved from within

the substantially planar configuration lying generally in the plane towards the transverse configuration extending out of the plane, the biased spring element comprising a curved inner region that limits penetration depth of the adjacent tines”, while new independent claim 50 recites, in part, “an annular-shaped body defining a plane and disposed about a central axis extending substantially normal to the plane, the body being resiliently deformable from a substantially planar configuration lying generally in the plane towards a transverse configuration extending out of the plane, the body comprising a plurality of looped elements extending about a periphery of the body, the body being biased to return to the substantially planar configuration.” Neither *Spence* nor *Peterson* teach or disclose the tines being “moved from within the substantially planar configuration lying generally in the plane towards the transverse configuration extending out of the plane” or “the the body being biased to return to the substantially planar configuration.”

In view of *Spence* and *Peterson*’s failure to teach the inventions of independent claims 17, 36, and 50, Applicant respectfully requests that the rejection under Section 103 be withdrawn.

#### **D. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner

finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 9th day of October, 2008.

Respectfully submitted,

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